

a container positioning means located within the ~~at least two~~ first cylinder to direct the position of ~~one or more~~ a containers toward at least one heat sink whereby the cylinder wall separates the container from the heat sink and a container positioning means located in the second cylinder to direct the position of a container toward the one or more locations where the cylinders thermally communicate ~~when the one or more containers are positioned in the at least two cylinders.~~

20. (Original) The thermoelectric temperature controlling device of claim 19 further including at least one cover means that operably connects to the at least two cylinder open top portions.

REMARKS

Reconsideration of the application is respectfully requested. Applicant has attempted to address every objection and ground for rejection in the final Office Action dated 20 December 2004, and believes that the claims as amended are in allowable form.

CLAIM REJECTIONS - 35 U.S.C. §103

Claims 1, 2, 3, 10, 11, 12 and 13 were rejected under 35 U.S.C. 103(a) as being unpatentable over Osterhoff et al. (U.S. Patent No. 5,720,170 in view of Bielinski (U.S. Patent No. 5,881,560). Independent claims 1 and 10 have been amended and applicant respectfully submits that the claims, in view of the amendments and the following remarks, are in condition for allowance. Claims 3 and 13 have been withdrawn.

The Osterhoff '171 patent discloses a device for heating and cooling a beverage. The disclosed device provides an opening in a side wall of a storage chamber (Fig. 4) that permits a heat transfer member (Fig. 7) to protrude into the chamber so that a side of the heat transfer

member contacts a beverage container stored in the chamber. Therefore, the heat transfer occurs only at an area of the heat transfer member that is in contact with the beverage container.

Applicant's invention provides a completely different way to provide for heat transfer to and from beverage containers. As shown in the application, drawings and amended claims 1 and 10, applicant's invention provides for a container to be placed in one or more of the storage cylinders whereby the container is in contact with the cylinder wall and the bottom of the cylinder. In applicant's device, the cylinders are constructed of thermally conductive materials and heat transfer occurs as a result of the container being in contact with and surrounded by the thermally conductive walls of the cylinder, the Osterhoff device is not constructed this way and does not teach this method of operation. See, for example, applicant's patent application paragraph 45. Moreover, Osterhoff teaches away from this type of operation because a container stored in the Osterhoff device will not even contact the bottom of the chamber and instead is raised above the chamber bottom by spokes 57. See patent col. 3, lines 30-35. The U.S. patent to Bielinski '560, even if combined with Osterhoff still does not teach applicant's invention as shown in the application and amended claims 1 and 10. Therefore, Osterhoff does not teach applicant's invention even when accompanied with the Bielinski '560 patent.

As such, claims 1 and 10 have been amended to distinguish over Osterhoff in view of Bielinski and applicant respectfully requests allowance of claims 1 and 10. Further, claims 2, 10, 11 and 12 depend from and contain all the limitations of claim 1 or 10, therefore applicant respectfully submits that claims 2, 10, 11 and 12 are in condition for allowance.

Claims 19 and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Osterhoff '171 in view of Bielinski '560 and further in view of Preis. '898.

Independent claim 19 has been amended and applicant respectfully submits that the claims, in view of the amendments and the following remarks, are in condition for allowance.

For the reasons stated above, applicant's invention as shown in the application and amended claim 19 is not taught by the Osterhoff patent in view of the Bielinski patent. Further, since the primary reference has been distinguished, applicant respectfully submits that in view of these differences and for the reasons given above, amended claim 19 is in condition for allowance and that the primary reference, alone or in combination, does not teach applicant's invention.

Claim 19 has been amended to distinguish over the cited references and applicant respectfully requests allowance of claim 19. Further, claim 20 depends from and contains all the limitations of claim 19, therefore applicant respectfully submits that claim 20 is in condition for allowance.

Claims 1, 2, 3, 4, 10, 11, 12, 13, 14, 19 and 20 were rejected under 35 USC 103(a) as being unpatentable over Osterhoff et al. U.S. Patent No. 5,720,171 in view of Sugawara '739. Claims 3 and 13 have been withdrawn. Further, claims 6 and 16 were rejected under 35 USC 103(a) as being unpatentable over Sugawara and Osterhoff and further in view of Sola '916 or Cretzmeder '405.

As discussed above, independent claims 1, 10 and 19 have been amended to distinguish over the primary reference Osterhoff. Additionally, the applicant respectfully submits that it is not obvious to combine the teachings of Osterhoff with the teachings of Sugawara. As discussed above, the principal of operation behind the Osterhoff invention is for the heat transfer element to enter into the cylinder by an opening in the cylinder wall so that the heat transfer element can

come into direct contact with the beverage container. As such, the Osterhoff patent teaches away from constructing the storage cylinder of a thermally conductive material because the heat transfer is occurring directly with the beverage container and not through a wall or other medium. As such, the Osterhoff device does not teach this combination of elements or method of construction.

Applicant respectfully submits that claims 1, 10 and 19 are in condition for allowance. Further, claims 2, 4, 6, 11, 12, 14, 16 and 20 depend from and contain all the limitations of claims 1, 10 or 19, therefore applicant respectfully submits that claims 2, 4, 6, 11, 12, 14, 16 and 20 are in condition for allowance.

Claim 9 was rejected under 35 USC 103(a) as being unpatentable over Sugawara and Osterhoff and further in view of Kieler (U.S. Patent No. 4,704,875) or Bloch et al. (U.S. Patent No. 6,494,316).

As discussed above, independent claim 1 has been amended to distinguish over the primary reference Sugawara and Osterhoff. Further, claim 9 depends from and contains all the limitations of claim 1, therefore applicant respectfully submits that claim 9 is in condition for allowance.

CONCLUSION

The art made of record by the Examiner but not relied upon has been reviewed by applicant and is believed not to anticipate or render obvious any claims in the application.

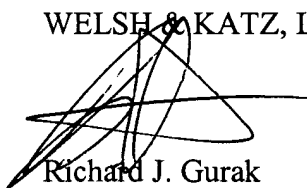
Applicant respectfully submits that the present application, in light of the amendments and the remarks, is in a condition for allowance, and such action is earnestly solicited. Should the Examiner determine that there are outstanding issues which may be readily resolved through

a telephone interview, the Examiner is invited to contact applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

WELSH & KATZ, LTD.

By

A handwritten signature in black ink, appearing to be 'Richard J. Gurak', written over the printed name.

Richard J. Gurak

Registration No. 41,050

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WELSH & KATZ, LTD.
120 South Riverside Plaza
22nd Floor
Chicago, IL 60606
Phone: (312) 655-1500
Fax: (312) 655-1501